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August 11, 1999

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Maggie Roman Salas, Esq.
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

RE: In the Matter of Numbering Resource Optimization
CC Docket No. 99-200

Dear Ms. Salas:

Enclosed please find an original and nine (9) copies of the Comments on Notice of Proposed Rulemaking and an original and four (4) copies of the Motion for Leave to Submit Late-Filed Comments on Notice of Proposed Rulemaking in the above-entitled docket, both filed on behalf of the Citizens Utility Board, the People of the State of Illinois, the Cook County State's Attorney's Office and the City of Chicago ("Illinois Government and Consumer Intervenor"). Included also are a Notice of Filing and Certificate of Service.

If you have any questions regarding either of these documents, please do not hesitate to contact me.

Sincerely,

David L. Heaton
Assistant State's Attorney

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	CC Docket No. 99-200
Number Resource Optimization)	
Connecticut Department of Public Utility Control)	
Petition for Rulemaking to Amend the)	RM No. 9258
Commission's Rule Prohibiting Technology-)	
Specific or Service-Specific Area Code Overlays)	
Massachusetts Department of Telecommunications)	
and Energy Petition For Waiver to Implement A)	NSD File No. L-99-17
Technology-Specific Overlay in the 508, 617, 781)	
and 978 Area Codes)	
California Public Utilities Commission and the)	
People of the State of California Petition for))	
Waiver to Implement A Technology-Specific)	NSD File No. L-99-36
or Service-Specific Area Code)	

**MOTION FOR LEAVE TO SUBMIT LATE-FILED
COMMENTS ON NOTICE OF PROPOSED RULEMAKING**

NOW COME the Citizens Utility Board, the People of the State of Illinois, ex rel. James E. Ryan, Attorney General of the State of Illinois, the Cook County State's Attorney's Office, Richard A. Devine, State's Attorney and the City of Chicago, by and through Mara S. Georges, Corporation Counsel (collectively, "Illinois Government and Consumer Intervenors" or "IGCI") and respectfully request that the Federal Communications Commission ("Commission") grant them leave to submit their late-filed Initial Comments in response to the Commission's Notice of

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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The People of the State of California)	
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Specific or Service-Specific Area Code)	

**COMMENTS OF THE CITIZENS UTILITY BOARD,
PEOPLE OF THE STATE OF ILLINOIS,
THE COOK COUNTY STATE'S ATTORNEY'S OFFICE and
THE CITY OF CHICAGO**

(Illinois Government and Consumer Intervenors)

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August 11, 1999

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Introduction

Thousand-Block Number Pooling and Long-Term Number Conservation were first proposed and implemented in Illinois. In April, 1997, the Citizens Utility Board, the Illinois Attorney General's Office, the Cook County State's Attorney's Office and the City of Chicago also known as the Illinois Government and Consumer Intervenor ("IGCI"), successfully petitioned the Illinois Commerce Commission ("ICC") to order thousand-block number pooling and long-term number conservation in five area codes or Numbering Plan Areas ("NPA") within the Chicago Standard Metropolitan Statistical Area ("SMSA").

Thousand-block number pooling is a system that allows up to ten different carriers¹ to share the ten NXX-X or thousand-blocks (blocks of one thousand telephone numbers) within an NXX. The Illinois model of thousand-block number pooling is mandatory and includes a requirement that carriers deposit into the number pool any thousand-block that has a fill rate of 10% or less.

Long-term number conservation consists of a set of rules and procedures that

¹In this document, we use the term "carrier" to mean any facilities-based entity that is allocated NXX or thousand-blocks from the North American Numbering Plan ("NANP"). In the case that a particular subset of carriers is being referred to, the subset will be identified explicitly, for example, wireline carriers or paging carriers. We use "wireless carrier" to mean any carrier other than wireline carriers, i.e. cellular, PCS, CMRS, paging, etc.

makes the thousand-block the basic unit of number administration. Simply put, the goal of long-term number conservation is to increase the fill rates of thousand-blocks and NXXs allocated to carriers. A second goal is to protect blocks for pooling. These rules constitute long-term conservation because they transcend the status of any particular NPA. They apply when an NPA is not in a jeopardy situation as well as when it is in jeopardy and even after exhaust. These rules and procedures were developed to be implemented by all carriers, wireline and wireless (including CMRS and paging), that use North American Numbering Plan ("NANP") numbering resources.

In May 1998, the ICC handed down a decision ordering carriers to implement number pooling and long-term number conservation in five Chicago NPAs. ICC Docket Nos. 97-0192 and 97-0221 (consolidated), Order, dated May 11, 1998 ("*Number Pooling Order*"). Wireline carriers were ordered to begin pooling in the 847 NPA and to expand pooling to the 630, 312, 773 and 708 NPAs. Wireless carriers were ordered to implement pooling as soon as technically feasible. All carriers in all five NPAs were ordered to immediately implement the long-term number conservation rules. The IGCI recommend that the Federal Communications Commission ("FCC" or "Commission") adopt the Illinois number pooling and long-term number conservation model and order their implementation as a number resource optimization method for the nation. In addition, included in our comments are recommendations regarding telephone number

status definitions, fill rate data disclosure, the mandatory ten-digit dialing requirement for all service overlays, public input, forecasting methodology, as well as a host of other issues.

I. Summary of Position

The time has come for the FCC to replace the crisis-oriented approach that has governed area code relief and telephone number administration in recent years with a proactive set of policies designed to benefit the interests of consumers, the public interest, the NANP, and telecommunications carriers. Telephone numbers, NXXs, NPAs and the entire NANP are valuable public resources and can only be preserved through the adoption of effective, efficient, and fair number conservation and resource optimization programs.

We believe that a comprehensive solution is critical and can be implemented without further burden being placed on the public. The comprehensive solution we recommend meets the needs of consumers and the public for simplicity and stability in the numbering system. It meets the needs of the telecommunications carriers for competitively neutral access to numbering resources and the industry as a whole for a sufficient supply of numbering resources. Thus, our recommendation satisfies the prerequisites of the public interest in that it produces the greatest good for the largest number.

Our recommended solution begins with a new approach to the management of telephone numbers, NXXs, NPAs and the NANP. This new approach builds a structural integrity into the NANP that is lacking now by making the thousand-block the foundation of the system. Our proposed solution addresses the problem of the industry forecasts that have been notoriously unreliable. Specifically, we recommend that the NANP Administration develop an accurate scientific forecasting methodology for NPAs and for the NANP as a whole.

The delegation of authority in an industry forum to develop number administration guidelines and number resource optimization methods is not appropriate, efficient or effective. Without orders from the FCC and state Commissions, industry forums rarely achieve consensus on the major policy questions before them.

Based on our experience in Illinois, we recommend that the long-term number conservation and number pooling program proposed by us and ordered by the ICC should serve as the model and blueprint for a nationwide NANP number resource optimization and management regime.

Therefore, we recommend that the Commission implement for every existing and future NPA a set of rules based on Illinois' long-term number conservation mandate. Number pooling with mandatory return of thousand-blocks, should be

ordered for the 100 largest SMSAs. All necessary authority to implement pooling beyond the 100 largest SMSAs should be delegated to the states. And, states should be authorized to order forms of number resource optimization. Furthermore, the Commission should adopt and implement these policies through the promulgation of federal regulations.

II. Legal and Policy Issues

A. NANP Administration Practices Should Reflect Policy Designating Telephone Numbers As Public Resources

Current number administration practices treat telephone numbers as if they are infinitely available, proprietary resources of the telecommunications industry. In contrast, Commission pronouncements and industry guidelines have identified telephone numbers as public resources. This Commission has explicitly declared telephone numbers to be public resources, and not the property of industry members.² The telecommunications industry itself appears to recognize this principle in their guidelines:

²In the Matter of Administration of the North American Numbering Plan, *Report and Order*, CC 92-237, July 13, 1995, (*Numbering Plan Report and Order*), para. 4.

The NANP [North American Numbering Plan] resources are considered a public resource and are not owned by the assignees. Consequently, the resources cannot be sold, brokered, bartered or leased by the assignee for a fee or other consideration.

If a resource is sold, brokered, bartered or leased for a fee, the resource is subject to reclamation by the administrator.³

Indeed, the FCC has consistently ruled, under a variety of circumstances, that numbering resources *of every kind* are public resources and not the property of carriers.⁴

Carriers are stewards, not owners, of the numbering resources allocated to them. As most carriers recognize, they have an implicit, if not explicit obligation to use numbers in the most efficient manner possible. Yet, the present downward cycle in the life expectancy of NPAs has made it nearly impossible for carriers to rise above the intensely competitive atmosphere in the telecommunications industry and deploy an effective number conservation and resource optimization program on a voluntary basis.

The challenge for this Commission is to put a regulatory scheme in place that

³INC 95-0407-008, December 11, 1998 Revision, Central Office Code (NXX) Assignment Guidelines, Section 2.1.

⁴See In the Matter of Administration of the North American Numbering Plan, Carrier Identification Codes (CICs), CC Docket No. 92-237, 12 FCC Rcd, 10353, 10359, *Order*, (1997) (stating that carriers do not own codes or numbers, but rather use them for the efficient operation of the public switched telephone network).

enforces the principle that numbering resources are neither infinite nor vested with the characteristics of private property.

B. The FCC Should Order Nationwide Number Conservation and Pooling, Rescind Mandatory Ten-Digit Dialing and Delegate Authority to States to Implement Number Optimization Measures.

We recommend that the FCC order telecommunications service-providers to immediately implement, in all existing and future NPAs, the telephone number conservation measures based upon measures already in effect in Illinois. By adopting our recommendations, the Commission would extend the life of NPAs and the NANP while providing states with the flexibility they need to address the dynamic range of numbering issues that different regions of the country face.

In addition, we recommend that the FCC order number pooling in the 100 largest SMSAs as soon as technically feasible. We further recommend that the FCC delegate additional authority to state regulatory commissions to: (1) expand mandatory number pooling to areas outside the 100 largest SMSAs and (2) order technology, or service-specific overlays, at their discretion, as provided herein.

In addition to this general requirement, we recommend that all specific number conservation and optimization measures adopted in this proceeding be promulgated as federal regulations, and not delegated to industry "guidelines." Accordingly, we

recommend that the Commission adopt in its federal regulations the following requirements:

Phone numbers shall be allocated to carriers by thousand-block only.

Carriers shall not open for assignment more than one thousand-block at a time in a rate area.

A carrier must have a 90% fill rate in a rate area to open a new block.

A carrier must have a 75% fill rate in a rate area to request a new block.

A carrier shall not assign any numbers from any thousand-block with a fill rate of 10% or less until all other thousand-blocks in the carriers possession in a rate area have fill rates of 90% or more.

C. The FCC Enjoys Broad Discretion In Delegating Number Administration Duties To Other Entities.

Section 251(e)(1) of the Telecommunications Act of 1996 ("the Act") (47 U.S.C. §151 et. seq.) grants the FCC plenary jurisdiction over numbering issues pertaining to the United States. Specifically, the Act directs the Commission to choose "one or more impartial entities" to administer telecommunications numbering, for the express purpose of making telephone numbers available on an equitable basis.

The Commission shall create or designate one or more impartial entities to administer telecommunications numbering and to make such numbers available on an equitable basis. The Commission shall have exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States. Nothing in

this paragraph shall preclude the Commission from delegating to State commission or other entities all or any portion of such jurisdiction. (47 U.S.C. §251(e)(1))

Congress' grant of exclusive jurisdiction over the United States portion of the North American Numbering Plan to the FCC provides for the broadest discretion in exercising that authority. Rather than specifying exactly the manner in which the FCC is authorized to delegate these responsibilities, the Act resoundingly declares that "nothing" shall preclude the Commission from delegating "all or any" of its authority over numbering issues to other entities. Congress' only explicit reference as to whom these other entities might include are state commissions. Thus, Congress expressly recognized the potential role of state regulatory bodies in numbering issues long before number exhaust had become a familiar term to local authorities or consumers.

D. The FCC Should Delegate Authority to States to Order Mandatory Number Pooling Outside the 100 Largest SMSAs and to Implement Service-Specific Overlays.

State commissions, by virtue of their familiarity with local dialing patterns, network engineering issues and consumer interests are the most likely delegate of the authority to adopt number optimization measures such as mandatory number pooling and service-specific overlays. This Commission has implicitly recognized the natural role of state commissions in these efforts by granting them increasing authority in this

regard. In one of its earliest decisions construing the Telecommunications Act, the Commission first emphasized the unique qualifications of state commissions to fashion relief from number exhaust and to address local implementation of number relief:

We authorize the states to resolve matters involving the implementation of new area codes. State commissions are uniquely positioned to understand local conditions and what effect new area codes will have on those conditions.⁵

In its efforts to fashion a more responsible framework for numbering resource management, this Commission already has shifted its focus from the industry's defensive approach to more creative efforts by local and state officials to impose some rationality into the number administration process. Clearly, relying on the industry consensus process has proven unwieldy and inflexible and the Commission cannot continue to depend upon it if it expects to achieve any real progress. The regulatory framework must be refashioned from one of crisis management to one that incorporates a permanent, on-going system of number conservation and optimization that all carriers participate in. Such a direction would permit responsible resource management to become an integral part of telecommunications regulation, rather than the patchwork, band-aid approach that has come to characterize number planning.

⁵In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 92-237, Second Report and Order and Memorandum Opinion and Order, August 9, 1996 ("Second Report and Order"), para. 272.

This is already underway in Illinois.

Accordingly, we recommend that this Commission delegate additional authority to state commissions to adopt mandatory number pooling outside the 100 largest SMSAs. This delegation of authority, however, should not prevent the Commission from ordering the national implementation of the proven number conservation and optimization measures adopted by the Illinois Commerce Commission, and currently in effect, in the 312, 630, 708, 773, and 847 area codes.

E. New Federal Rules Are Required That Promote The Public Interest and Give Consumers A Greater Voice

There is a general and overarching public interest in the efficient utilization and conservation of telephone numbers and the NANP. Currently, the FCC's general requirements for the administration of numbering resources do not adequately reflect the public interest.⁶ Rather, the general requirements emphasize the impact of number administration on the carrier industry and its ability to receive numbers in a timely and efficient manner. *Id.* While critically important, it must be acknowledged that the interests of carriers and the need for numbering resources cannot be equitably and expeditiously satisfied unless the greater public interest is upheld.

With NPA "relief" plans frequently disrupting everyday life for millions of people

⁶ See 47 CFR 52.9.

throughout the country, the public is growing increasingly frustrated with the seemingly endless changes that are occurring in the numbering system. There is a growing confusion with area codes, dialing and related issues. This confusion is not surprising given that these changes have not been part of a comprehensive, consciously conceived plan. There is no clear and consistent logic to the evolution of the NANP as it effects the public.

Essentially, the response to the proliferation of NPAs has been to search for a silver bullet. From repeated geographic splits, to the wireless overlay, to the all service overlay, each "solution" has been rejected by regulatory authorities or has proven extremely unpopular with the public. With each failure more and more of a burden is placed on the shoulders of the consumers and the public.

Over the course of this search for a solution to the area code exhaust crisis, every industry segment from the "mom-and-pop" paging shop to the global telecommunications giants have been well represented in a plethora of regulatory proceedings and industry fora. However, there has been little opportunity for public input. Granted, there has been plenty of debate about what is best for consumers and what the public is willing to accept, but there have been few opportunities for input by the public.

Therefore, the Commission must promote and facilitate public input into all consensus building and decision-making processes. Accordingly, we recommend that the Commission adopt in its federal regulations the following general requirement:

The public interest in the efficient utilization and conservation of the NANP must be ensured by the involvement of the public in the NANPA decision making process. The involvement of the public must be facilitated by the convening of public hearings and full voting rights for consumer representatives on NANC and industry fora.

We recognize the critical resources that federal advisory groups like NANC and industry fora in general contribute in assisting federal agencies like the FCC in the administration and development of federal regulations. We believe, however, that industry "guidelines" and other industry "recommendations" have played far too dominant a role in the development and administration of numbering policy. This imbalance may be explained by the fact that current federal regulations are replete with directives to the numbering administrator to "administer the numbering resources... consistent with industry-developed guidelines"⁷

Subsection 52.13(b)(3) goes even further by requiring the Numbering Plan Administrator to specifically perform the following additional function:

Complying with guidelines of the North American Industry Numbering Committee (INC) or its successor, related

⁷ See, e.g., 47 CFR 52.13(b), (b)(3), (b)(11), (b)(12) and (d).

industry documentation, Commission regulations and orders, and the guidelines of other appropriate policymaking authorities, *all of which may be modified by industry fora or other appropriate authority*; (emphasis added)

We recommend that the federal regulations be modified to remove these directives and that the numbering administrator and state commissions be bound to comply solely with federal regulations.

We, also, are concerned by the unbalanced composition of NANC, the federal advisory board. The Federal Advisory Committee Act requires that the advisory committee "must have a membership fairly balanced in terms of the points of view expressed." See 5 U.S.C. App. 2 et seq. (1998). Currently, only two members of NANC are representatives of consumer and public interests. The remaining members are all industry representatives. Since NANC recommendations are made on the basis of "industry consensus," it is possible that consumer and public interests are being overlooked. We recommend that the Commission investigate how consumer representation can be improved and amend the charter of this FCC advisory body to ensure that the voice of the consumers is heard and that their vote is counted.

III. Recommendations for National Number Conservation and Resource Optimization

We are recommending an integrated solution to the NPA proliferation crisis and the concomitant hemorrhaging of the NANP. We propose the implementation of a program of long-term number conservation rules, thousand-block number pooling and the collection of quarterly thousand-block fill rate data and forecast information. Each of the components of this integrated approach is in effect in Illinois. Long-term universal number conservation, as described below, has been in effect in five NPAs since May 1998. Mandatory thousand-block number pooling has been in effect for wireline carriers in the 847 NPA since June 1998, and is being rolled out into the 630, 312, 773 and 708 NPAs. Quarterly data reporting has been required for five Chicago NPAs since the first quarter of 1999.

Accordingly, we recommend that the Commission adopt federal regulations that mandate the following measures.

A. Long-Term Number Conservation

The first and foremost function of long-term number conservation is to maximize the utilization of number resources in an NPA. It has the added benefit of preserving thousand-number blocks for pooling. Over the long run, number conservation will help to preserve the North American Numbering Plan. In the short run, it will lengthen the

life of an NPA. What follows is a listing of the key components of long-term number conservation.

1. Mandate Participation By All Carriers

Long-term number conservation needs to be mandated and made universal. It is not practical to rely on voluntary agreements among a few concerned carriers. Only a rule can assure every carrier that their individual conservation efforts will not diminish their ability to compete vis-a-vis other carriers. Anti-competitive issues will arise under a voluntary system if just one carrier chooses not to conserve numbers. Mandatory long-term number conservation is fair and equitable, competitively neutral and places no greater burden on any one carrier than any other.

Long-term number conservation does not require new technology. It is a set of rules and procedures that any carrier with numbering resource can and should abide by. It is competitively neutral and does not unfairly or unduly burden any particular carrier or technology or service.

2. Distribute Numbers In Thousand-Blocks Only

There can be little doubt that the recent proliferation of NPAs and the increasing likelihood of a premature exhaust of the North American Numbering Plan has been caused by the fundamental inefficiencies inherent in the current number administration system. With the emergence of wireless services and the opening of the wireline

market to competition, new NPAs frequently begin operating on day one with half of all their NXXs assigned to carriers.

For example, a typical NPA might have twenty-five wireless carriers in two rate areas and fifteen wireline carriers in thirty rate areas. In a system where a carrier receives 10,000 numbers for each rate area, if every eligible carrier wants numbering resources in every applicable rate area when the NPA is established, then 500 NXXs would be immediately assigned. That would leave less than 300 NXXs available for growth. Essentially, that is what happened in the 847 NPA in Chicago's northern suburbs. Before a single 847 NPA phone number was assigned to a consumer, the 847 NPA had over 50% of its assignable NXXs allocated to carriers.

Given that the supply of NXXs in an NPA is relatively small compared to the demand from carriers (a result of the inefficient system of requiring an entire NXX code per rate center), an allocation system appropriate to an industry with numerous carriers, services, technologies and rate areas must be devised. A solution that is readily available and manifestly fair is to allocate telephone numbers to all carriers in blocks of one thousand. Thousand-block number allocation is the appropriate response to the vicious cycle of premature NPA exhaust and extremely short-lived relief plans that has taken hold in many parts of the country. It is an elegant solution in that it doesn't resort to brute force as would an individual telephone number allocation system. Moreover, a

thousand-block based system can be implemented now by all carriers and will be effective for the foreseeable future.

The FCC should mandate that NANPA establish a thousand-block allocation and tracking system and that all carriers implement thousand-block number acquisition, tracking and provisioning. A carrier in need of 1 to 999 numbers in a rate area would be allocated one thousand-block. A carrier needing 1,000 to 1,999 numbers would be allocated two thousand-blocks, etc. Also, the FCC should also modify the one NXX per carrier rule set forth in the *Second Report and Order*. That rule requires that every carrier certified to provide service no later than 90 days prior to the exhaust of the NPA shall be allocated one NXX in the NPA. With the implementation of thousand-block allocation this requirement should be changed to an allocation of one thousand-block.

3. Require A 90% Fill Rate For All Thousand-Blocks

Carriers should be required to utilize 90% or more of the phone numbers in their possession. Theoretically, there is no technical impediment to any carrier utilizing 100% of every thousand-block in its possession. In practice, the count of phone numbers not available for assignment in a thousand-block is added to as well as subtracted from therefore some cushion must be provided. The 10% cushion we recommend is based upon an analysis of thousand-block fill rate data collected from all

carriers in the 847 NPA. This data showed that it is not uncommon for a carrier to have a fill rate for a thousand-block of 100%.

A comparison of fill rate data from June 1997 and July 1998 showed that the 90% Fill Rate Requirement increased the number and proportion of thousand-blocks that met the standard. In 1997 2,238 thousand-blocks in 847 were 90% or more filled which was 37% of all allocated thousand-blocks. In 1998 the number of blocks 90% or more filled rose to 2,800 or 43% of all allocated thousand-blocks.

4. Require A 75% Request Threshold

Carriers should be allowed to request the allocation of new thousand-blocks for use in a rate area when the fill rate of their existing thousand-blocks in that rate area reaches 75%. This rule applies even when there are thousand-blocks from more than one NPA being used in a single rate area. This would permit even rapidly growing carriers to obtain thousand-blocks in a timely manner.

5. Require Use Of Only One Thousand-Block At A Time

Every carrier using NANP numbering resources shall use only one thousand-block in a rate area at a time for assignment of telephone numbers. Before a carrier can open a new thousand-block for assignment in a rate area, the carrier must have used 90% of all the numbers in all the other thousand-blocks it has in that rate area.